

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.962 of 2005.

Date of decision: 12.11.2007.

Paryatan Avam Jan Kalyan Samiti

....Petitioners

-Versus-

State of H.P. and others

....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.Ajay Sharma, Advocate.

For Respondents: Mr.M.S.Chandel, Advocate General with
Mr.R.M.Bisht, Dy.A.G. for respondents
No.1 & 2.
Mr.Shrawan Dogra, counsel for R-3.

Deepak Gupta, J.(Oral)

The main dispute raised in this petition is with regard to the rate on which water is to be supplied to the villager of Kufri by the Municipal Corporation Shimla.

Admittedly Kufri does not fall within the municipal limits of Municipal Corporation Shimla. Water however is being supplied to some of the members of the petitioner Society residing in the area. The grievance of the petitioners is that though they are old residents of Kufri, living in houses constructed more than 30-40 years ago, the officials of the Municipal Corporation are taking the stand that they shall be charged commercial rates for supply of water till

completion plan of the building is submitted to the Municipal Corporation, Shimla.

Shri Ajay Sharma, learned counsel for the petitioners submits that since the houses are old and Kufri has been included in the Special Area Development Authority only recently it is not possible for the petitioners who have old houses to obtain completion plans. It has also been urged that no discrimination can be made with regard to the rate of water to be charged from residents of the area forming part of Municipal Corporation Shimla and those residing outside the Municipal Corporation area.

It has been urged that in fact part of the water supply to Shimla is from Chair khad which is closer to Kufri and the cost is less. As far as this aspect of the matter is concerned we are of the considered view that this Court has no jurisdiction to decide the rates at which water is to be supplied. It is for the State Government to decide at which rate the water should be supplied. The State Government under the scheme of the Municipal Corporation Act has notified different rates for supply of water within the area of Municipal Corporation and outside. Under the Municipal Corporation Act the Corporation is only duty bound to supply water within the municipal areas. When it is asked to supply water outside the municipal areas it entitled to charge different or higher rate. There can be various reasons for this. One of the main reasons would be that the supply lines etc. within the Municipal Corporation area are already laid down whereas for areas outside the Municipal

Corporation fresh supply lines will have to be laid. Merely because Kufri happens to be on the way will not make any difference because uniform policy has to be applied to all areas falling outside the M.C. area. There cannot be different rates for that area outside the Municipal area which may be closer to the water supply scheme and different rates for the area far away. In any event there is an intelligible classification between the two i.e. Municipal Corporation area and area outside the Municipal Corporation. No fault can be found with this classification.

With regard to the other aspect of the matter we are prima facie in agreement with the submission of the counsel for the petitioners that the residents of Kufri who are residing in houses constructed long time back cannot be forced to now obtain fresh completion plans. It also appears from the letter dated 10th June, 2005 issued by the Municipal Engineer, Water Supply of the Municipal Corporation Shimla that one of the reasons for treating the connections of the petitioners as commercial may be that they have not obtained completion certificates. For construction purposes we find that rate to be charged is Rs.27.50 per kilo liter. However, an affidavit has been filed in compliance to our order dated 11th May, 2007 in which it is stated that the rate being charges from the petitioners is only Rs.16.50 per kilo liter. We are unable to reconcile these two rates. Since different individuals are involved we do not want to issue any omnibus directions because each individual's case has to be decided on its own peculiar facts and circumstances.

We therefore dispose of this writ petition with the following directions:

- i) The Municipal Corporation Shimla shall ensure that a survey of all the consumers to whom water is being supplied in Kufri area is carried out by the Municipal Corporation, Shimla latest by 31st December, 2008;
- ii) During the course of this survey the Municipal authorities shall first categorize the consumers in two categories viz. commercial and domestic.
- iii) Thereafter the Municipal authorities shall further categorize the domestic users into those who are residing in their old houses and are not required to obtain commercial plan. It shall also similarly categorize those consumers who may have constructed new houses but have obtained completion plans. All these residents shall be charges prevalent domestic water rates for supply of water outside the municipal limits as fixed by the State Government from time to time.
- iv) In case the Municipal authorities feel that any resident who claims to be using the water for domestic purpose is in fact using the same for commercial purpose or there is requirement that these persons are required to obtain completion plans then the Municipal Corporation shall issue fresh notice to each of such residents by 28th February, 2008. The residents shall reply to the said notice latest by 31st March, 2008 and the Municipal Corporation shall pass speaking orders thereon by 31st May, 2009.
- v) The completion certificate shall not be insisted upon in respect of those buildings which have been or

where it is apparent that construction was completed prior to the inclusion of Kufri in SADA area.

With the aforesaid directions the writ petition is disposed of.

(Deepak Gupta),
Judge

November 12, 2007
PV

(V.K. Ahuja),
Judge